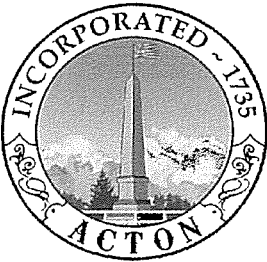


3/11 (10)

Use Special Permit - #11/16/12-438 (Gowing)  
251-255 Main Street  
January 14, 2013

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**Board of Selectmen**

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**TOWN OF ACTON**  
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**DECISION**  
#11/16/12-438

**251-255 Main Street**  
Use Special Permit  
January 14, 2013

GRANTED with Conditions

Decision of the Acton Board of Selectmen (hereinafter the Board) on the request for a Use Special Permit made by Ken Sundberg (hereinafter the Applicant) for the property located at 251-255 Main Street in Acton, Massachusetts, owned by Sundberg Robert A & Robert Jr Trustees, 253 Main Street, Acton, MA 01720. The property is shown on the 2007 Acton Town Atlas map F-3 as parcels 121-1 and 121-2 (hereinafter the Site). The requested Use Special Permit seeks approval for an additional 67 restaurant seats on the property. This Use Special Permit would increase the total number of restaurant seats on the property to 106 seats.

This Decision is in response to an application for a Use Special Permit, submitted to the Board of Selectmen on November 16, 2012, pursuant to Sections 10.3 and 3.5.5(9) of the Acton Zoning Bylaw (hereinafter the Bylaw), to permit an additional 67 restaurant seats on the subject property. The Board opened a duly noticed public hearing on January 14, 2013 and heard testimony from the applicant

as well as municipal staff. The Board then proceeded to close the public hearing.

Board members Pamela A. Harting-Barrat (Chair), Janet K. Adachi (Vice Chair), Mike Gowing (Clerk), David Clough and John Sonner were present throughout the hearing. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Town Clerk's office or the office of the Board at Acton Town Hall.

## **1 EXHIBITS**

Submitted for the Board's deliberation were the following exhibits:

1.1 An application for a Use Special Permit was received and filed with the Town Clerk on November 16, 2012. The drawings and documents submitted as part of the application comprise the following:

- Cover Letter written by Kenneth Sundberg, Sundberg II Realty Trust, 251-255 Main Street, Acton, MA;
- "Layout Plan" from Site Plan Special Permit #06/05/07-411 prepared by Stamski and McNary, Inc., dated May 31, 2007 and last revised November 10, 2008;
- "Subway Store Concept" layout plan, drawn by Jon Serena, dated September 29, 2011;
- Architectural floor and elevation plans ("Proposed Addition, 253 Main Street") by E.J. Rempelakis Associates, consisting of one (1) sheet;

Additional documentation submitted as part of the application included the following:

- Certified Abutters List.

1.2 Interdepartmental communication was received from:

- Acton Engineering Department, dated January 3, 2013;
- Acton Zoning Enforcement Officer & Assistant Town Planner, dated January 10, 2013.

Exhibit 1.1 is hereinafter referred to as the Plan.

## **2 FINDINGS AND CONCLUSIONS**

Based upon its review of the exhibits, and the record of the proceedings, the Board finds and concludes that:

- 2.1 The site is located within the Kelley's Corner Zoning District and Groundwater Protection District Zone 4.
- 2.2 The entire property is approximately 1.21 acres (52,534 ft<sup>2</sup>) in area.
- 2.3 Site Plan Special Permit/Special Permit #06/05/07-411 approved an 8,000 square foot, two-story addition, and a 30 seat restaurant.
- 2.4 The First Amendment of Site Plan Special Permit/Special Permit #06/05/07-411 approved a modification – due to changing economic conditions – from the previously approved two-story addition to a one-story addition to be constructed.
- 2.5 The proposed restaurant use is permitted on the Site by Use Special Permit.
- 2.6 A restaurant with 10 seats or less is permitted as of right in the subject zoning district. Any additional seats in excess of 10 requires a Use Special Permit.
- 2.7 The applicant is proposing to add an additional 67 restaurant seats. There are 39 previously approved restaurant seats on the property.

- 2.8 The total number of restaurant seats is being increased from 39 seats to 106 seats total (all seats are to be located within the structure, no seating is proposed or approved for the exterior of the restaurant).
- 2.9 The parking calculations and proposed modifications to the parking lot approved under the original site plan special permit provide adequate parking for the currently proposed 106 restaurant seats as well as the dental office use.
- 2.10 There are no proposed modifications or alterations to the structure which affect the overall FAR of the property. The restaurant seats will occupy new commercial space which was approved under the original Site Plan Special Permit and subsequently amended.
- 2.11 The Board has received comments from various Town departments, which are listed in Exhibit 1.2 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.
- 2.12 The proposed use and the Use Special Permit applied for herein are consistent with the Master Plan, will not be detrimental or injurious to the neighborhood in which the use is to take place, provides for convenient and safe vehicular and pedestrian movement within and through the site, provides an adequate number of parking spaces, provides adequate methods of refuse and waste removal from the site, and is in harmony with the purpose and intent of the Bylaw.

### **3 BOARD ACTION**

Therefore, the Board voted on January 14, 2013 to GRANT the requested Use Special Permit subject to and with the benefit of the following Plan modifications, conditions, and limitations.

#### **3.1 PLAN MODIFICATIONS**

The Building Commissioner shall not issue a building permit, nor shall any construction activity begin on the Site, until and unless the Zoning Enforcement Officer confirms that any proposed building permit plans are in compliance with information submitted, reviewed and approved as part of this Use Special Permit. Except where otherwise provided, all such information shall be subject to the approval of the Zoning Enforcement Officer. Where approvals are required from persons or agencies other than the Zoning Enforcement Officer, the Applicant shall be responsible for providing evidence of such approvals to the Zoning Enforcement Officer.

#### **3.2 CONDITIONS**

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this Use Special Permit null and void, without force and effect, and shall constitute grounds for the revocation of this Use Special Permit, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this Use Special Permit using any and all powers available to it under the law.

- 3.2.1 The Use shall be established and operated at all times in compliance with all applicable requirements promulgated by the Acton Board of Health.
- 3.2.2 Prior to any building permit or Certificate of Occupancy for a Use associated with this Use Special Permit, the Applicant shall prepare a sidewalk easement plan along the Main Street Boundary.
- 3.2.3 Prior to any Certificate of Occupancy being issued for a Use associated with this Use Special Permit, the Applicant shall submit a complete certified as-built plot plan prepared by the engineer of record certifying that the project was built according to the approved documents. The as-built

plan shall show all pavement, building and drainage structures above and below grade in their true relationship to plot lines, and include appropriate grades and elevations. In addition to the engineer of record, said plan shall be certified by a Massachusetts Registered Land Surveyor.

- 3.2.4 The Use shall be established and conducted at all times in accordance with the terms of this Use Special Permit and shall conform with and be limited to the improvements indicated in the Plan as modified herein.
- 3.2.5 No work on the Site shall begin prior to the issuance of a building permit.
- 3.2.6 The applicant shall be diligent and ensure that absolutely no construction debris or material from the site enter any of the abutting properties, storefronts, parking lot area, or the Main Street and Beverly Road public right-of-ways.
- 3.2.7 All construction activity on the property relating to this Site Plan Special Permit/Special Permit shall be limited to the hours of: Monday – Friday: 7:00am – 5:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays: no work permitted.
- 3.2.8 All work on the Site shall be conducted in accordance with the terms of this Use Special Permit and shall conform with and be limited to the improvements shown on the Plan as modified herein.
- 3.2.9 All water service lines shall be installed in accordance with the specifications of the Acton Water Supply District.
- 3.2.10 Any changes to the site that are not in conformance with this Use Special Permit shall require the approval of the Board.
- 3.2.11 Every attempt shall be made to minimize any adverse construction conditions (such as, but not limited to dust and noise, etc.) on neighboring and abutting properties and commercial spaces.
- 3.2.12 This Decision shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit or occupancy permit for the Use, whichever is first.

### **3.3 LIMITATIONS**

The authority granted to the Applicant under this Use Special Permit is limited as follows:

- 3.3.1 The foregoing required conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.
- 3.3.2 This Use Special Permit applies only to the Site identified in this decision and to the proposed use and activity as shown on the Plan.
- 3.3.3 The Original Decision and the First Amendment shall remain in full force and effect, except as specifically amended or added to herein.
- 3.3.4 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.
- 3.3.5 No approval of any indicated signs or advertising devices is implied by this Decision.
- 3.3.6 Prior to any building permit being issued for the subject property, the applicant shall demonstrate compliance with any and all other comments/concerns provided by other municipal disciplines.
- 3.3.7 Prior to any Certificate of Occupancy being approved or issued for the subject use, the applicant shall demonstrate compliance with all conditions and comments imposed by the Board of Selectmen through this Use Special permit.

3.3.8 This Use Special Permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than 1 year. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.

3.3.9 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this Use Special Permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

#### 4 APPEALS

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, S. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

The Town of Acton Board of Selectmen

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Pamela A. Harting-Barrat, Chair

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Date Filed with Town Clerk

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Eva K. Szkaradek, Town Clerk

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

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Eva K. Szkaradek, Town Clerk

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Date

Copies furnished:

Applicant -  
certified mail #  
Town Clerk  
Fire Chief

Building Commissioner  
Engineering Administrator  
Planning Department  
Police Chief

Health Director  
Assistant Assessor  
Town Manager